

IN THE MATTER OF MERCHANT MARINER'S DOCUMENT NO. Z-770107-D1 AND ALL  
OTHER SEAMAN'S DOCUMENTS

Issued to: Juan C. CASTRO

DECISION OF THE COMMANDANT  
UNITED STATES COAST GUARD

1567

Juan C. CASTRO

This appeal has been taken in accordance with Title 46 United States Code 239(g) and title 46 Code of Federal Regulations 137.30-1.

By order dated 31 January 1966, an Examiner of the United States Coast Guard at New York, New York, suspended Appellant's seaman documents for six months on twelve months' probation upon finding him guilty of misconduct. The specification found proved alleges that while serving as a deck maintenance man on board the United States SS SANTA LUISA under authority of the document above described, on or about 22 September 1965, Appellant wrongfully had intoxicating liquor (nine bottles) in his possession at sea.

At the hearing, Appellant was represented by professional counsel. Appellant entered a plea of not guilty to the charge and specification.

The Investigating Officer introduced in evidence the testimony of three witnesses and introduced six documents.

In defense, Appellant offered in evidence the testimony of two witnesses (one of them a witness presented by the Investigating Officer but recalled), and five documents.

At the end of the hearing, the Examiner rendered a decision in which he concluded that the charge and specification had been proved. The Examiner then entered an order suspending all documents issued to Appellant for a period of six months on twelve months' probation.

The entire decision was served on 2 February 1966. Notice of appeal was timely filed on 14 February 1966. Counsel requested until 2 May to file further brief, but none has been received.

FINDINGS OF FACT

On 22 September 1965, Appellant was serving as deck maintenance man on board the United States SS SANTA LUISA and acting under authority of his document while the ship was at sea.

On the date in question, about two days before expected arrival at New York, a purser who had the duty to review declarations for Customs entry, noted Appellant had declared eighteen bottles of spirits. Observing that Appellant had only three bottles of spirits in bond, the purser called this discrepancy to the attention of higher authority, because on board SANTA LUISA crewmembers were permitted to have what was then the legal quantity for importation without the tax of one gallon of spirits, which had to be carried in bond.

The chief mate went to Appellant's room and was immediately, on request, shown eleven fifths of rum. Nine of these were confiscated. Two, Appellant was permitted to enter into bond because the quantity he had there already lacked two fifths of the then legal limit for importation without tax.

Appellant had actually purchased more rum than was found in his room. Some he had drunk; some he had given away to other crewmembers.

### BASES OF APPEAL

The notice of appeal in this case sets out five grounds, as follows:

- 1) the specification fails to state misconduct
- 2) the charges seek to enforce regulations of a steamship company rather than a Federal rule or regulation;
- 3) the enforcement of the company regulations was discriminatory;
- 4) there is no jurisdiction in the Coast Guard to enforce private regulations;
- 5) the order was too severe.

There are here actually only three grounds. those numbered 2, 3, and 4, can be reduced to one point, that the proceedings here merely enforce company regulations and not Federal rules. Therefore, in the Opinion herein, three points will be discussed, whether the specification alleges misconduct, whether the proceedings merely enforce company regulations and not Federal rules, and whether the order is too severe.

APPEARANCE: Lester E. Fetell, Esquire,  
Bronx, New York

### OPINION

#### I

whether the allegation of the specification alleges misconduct under R. S. 4450 is a well settled question. A statement of wrongful possession of intoxicants aboard a vessel such as SANTA LUISA is enough to permit proceedings under R.S. 4450. Appeal Decisions 1107, 1164, 1198, 1282.

## II

Appellant's second point is that the proceedings herein merely serve to enforce a private company's order and hence are outside the jurisdiction of R.S. 4450.

This point lacks efficacy for several reasons.

A private steamship company's policy for maintenance of order and good safety conditions aboard a vessel, governing the conduct of the crew, is precisely the kind of rule that does establish standards for the invocation of the "misconduct" provision of R.S. 4450.

A company policy as to conduct of the crew, relative to matters of safety aboard the ship, is a good norm for judging misconduct. A company policy with regard to whether a crewmember could act in certain ways or wear certain clothing while ashore, absent some other considerations, could have no connection with safety aboard the ship. Policy as to possession of intoxicants on board the vessel just as obviously does have to do with the ultimate, in these proceedings, question of safety.

(It cannot be overlooked here that Appellant accounted for the discrepancy between the bottles of spirits he had declared and the bottles that were tallied on the search and bonded list was explained away by his testimony that he had a few drinks, to ease the pain in his foot, but that he had given the rest of the missing bottles to other crewmembers. Appellant was charged with being intoxicated on board; this point was made many times at the hearing. But however innocently he may account for the disappearance of his bottles, it remains that the admitted manner of disposition, indiscriminately to other members of the crew in a short space of time, invited just that danger to safety that the company order was designed to prevent-access of the crew to hard liquor at sea.)

To pursue this question further, it can be said that a "company policy" designed to achieve safety at sea can, when so treated by the master of the vessel, become a lawful order of the master.

Evidence was introduced in this case of a pattern of placement of orders as to the handling of liquor by the crew. The Examiner found this sufficient. Appellant had served many years aboard SANTA LUISA. Constructively he must be charged with knowledge of the rules.

But all of the foregoing, on the company rules and the master's orders, is really superseded by this, that Appellant entered a written agreement that he would not introduce "grog" aboard the vessel, and would have none aboard. Grog is commonly defined as any intoxicating liquor. Appeal Decisions 1126, 1164. In violation of this agreement, Appellant did have liquor in his possession. This is misconduct under R.S. 4450. In the charging of misconduct in this case there is not mere enforcement of a company policy. There is finding that a seaman has breached his shipping agreement, required by Federal Law.

### III

Whether the suspension ordered by the Examiner is too severe is the last question. Several things must be noted here.

The first is that Appellant had no prior record. The second is that it was Appellant's own declaration that led to his apprehension in possession of illicit liquor. The third is that Appellant's seaman's papers were not suspended at all, except on probation.

Since the entire suspension was placed on a reasonable period of probation, I cannot say that the order of the Examiner is too severe. It is appropriate under the provisions of 46 CFR 137.20-165.

### ORDER

The order of the Examiner dated at New York, New York, on 31 January 1966, is AFFIRMED.

W. J. Smith  
Admiral, United States Coast Guard  
Commandant

signed at Washington, D. C., this 1st day of July 1966.

### INDEX

#### ARTICLES

grog prohibited  
standard of misconduct

#### CHARGES AND SPECIFICATIONS

sufficiency of

#### INTOXICATING LIQUOR

grog, defined  
possession of

#### MISCONDUCT

policy of shipowner as standard  
standards of

POLICY OF SHIPOWNER  
standard of misconduct